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3 UNITED STATES DISTRICT COURT  
4 WESTERN DISTRICT OF WASHINGTON  
5 AT TACOMA

6 WALTER J. BARBEE,

7 Petitioner,

8 v.

9 STATE OF WASHINGTON,

10 Respondent.

No. C09-5667 RBJ/KLS

ORDER TO AMEND

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12 This habeas corpus petition has been referred to United States Magistrate Judge Karen L.  
13 Strombom pursuant to Title 28 U.S.C. § 636(b)(1) and Local MJR 3 and 4. Petitioner Walter J.  
14 Barbee seeks federal habeas corpus relief pursuant to 28 U.S.C. § 2254. Dkt. 1-2.

15 Mr. Barbee has failed to name the correct Respondent, thereby depriving this Court of  
16 personal jurisdiction. *United States v. Giddings*, 740 F.2d 770, 772 (9th Cir. 1984). 28 U.S.C. §  
17 2243 requires that writs are to be directed “to the person having custody of the person detained.”  
18 The proper respondent in a federal habeas corpus petition is the petitioner’s “immediate  
19 custodian.” *Demjanjuk v. Meese*, 784 F.2d 1114, 1115 (D.C.Cir. 1986). A custodian “is the  
20 person having a day-to-day control over the prisoner. That person is the only one who can  
21 produce ‘the body’ of the petitioner.” *Guerra v. Meese*, 786 F.2d 414, 416 (D.C.Cir. 1986).

22 Therefore, Mr. Barbee’s custodian for purposes of his habeas corpus petition challenging  
23 the execution of his Washington state sentence, is the warden/superintendent of the prison where  
24 he is currently confined. See, e.g., *Brittingham v. United States*, 982 F.2d 378 (9th Cir. 1992);  
25 *Dunne v. Henman*, 875 F.2d 244, 249 (9th Cir. 1989). According to his petition, Mr. Barbee is  
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1 currently confined at the McNeil Island Corrections Center (MICC) in Steilacoom, Washington.

2 The warden of MICC is Ron Van Boening.

3 Accordingly, it is **ORDERED**:

4 (1) Mr. Barbee shall amend his petition to name Ron Van Boening as Respondent.

5 Mr. Barbee may amend his petition by correcting the first page only and providing the Court  
6 with two copies of the amended first page reflecting the properly named Respondent. Mr.  
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8 Barbee shall provide the court with two copies of the amended first page of his petition **on or**  
9 **before December 11, 2009.**

10 (2) The Court Clerk is directed to send a copy of this Order and a form 28 U.S.C. §  
11 2254 petition to Mr. Barbee, and to note this matter for the Court's **December 11, 2009** calendar.

12 DATED this 23rd day of November, 2009.

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15 Karen L. Strombom  
16 United States Magistrate Judge  
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